

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MICHAEL JAMES RICONOSCIUTO,

Petitioner,

v.

STEVE LANGSFORD,

Respondent.

CASE NO. 3:16-CV-05964-RJB-DWC

ORDER DENYING MOTION FOR  
COUNSEL

The District Court has referred this action to United States Magistrate Judge David W. Christel. Currently pending in this action is Petitioner's Motion to Appoint Counsel under CJA Act. Dkt. 10.

There is no right to appointed counsel in habeas cases unless an evidentiary hearing is required or such appointment is "necessary for the effective utilization of discovery procedures." *See McCleskey v. Zant*, 499 U.S. 467, 495 (1991); *United States v. Duarte-Higareda*, 68 F.3d 369, 370 (9th Cir. 1995); *Bonin v. Vasquez*, 999 F.3d 425, 429 (9th Cir. 1993); *United States v. Angelone*, 894 F.2d 1129, 1130 (9th Cir. 1990); *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983); Rules Governing Section 2255 Cases in the United States District Courts 6(a) and 8(c).

1 The Court may appoint counsel “at any stage of the case if the interest of justice so require.”  
2 *Weygandt*, 718 F.2d at 754. In deciding whether to appoint counsel, the Court “must evaluate the  
3 likelihood of success on the merits as well as the ability of the petitioner to articulate his claims  
4 pro se in light of the complexity of the legal issues involved.” *Id.*

5 Here, the Court found Petitioner challenged both the conditions of his confinement and  
6 the fact or duration of his confinement in the Petition. Dkt. 6. The Court declined to serve the  
7 Petition and directed Petitioner to file an amended pleading by March 17, 2017. *See id.*, Dkt. 9.  
8 As the Petition has not been served, the Court does not find good cause for granting leave to  
9 conduct discovery and has not determined an evidentiary hearing will be required. *See* Rules  
10 Governing Section 2255 Cases in the United States District Courts 6(a) and 8(c). Furthermore,  
11 Petitioner has not filed an amended pleading and thus the Court cannot determine the likelihood  
12 of success on the merits. Therefore, the Court does not find Petitioner has shown the interests of  
13 justice require the Court to appoint counsel at this stage in the case.

14 As Petitioner has not shown appointment of counsel is appropriate at this time, the  
15 Motion is denied without prejudice.

16 Dated this 14th day of March, 2017.

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19 David W. Christel  
20 United States Magistrate Judge  
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